U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-A-K-

DATE: JUNE 5, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician and researcher specializing in neurology, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework. In addition, he contends that the Director imposed an overly high standard of proof. With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer –
> >
> > > (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.[1] *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Director found that the Petitoner qualifies as a member of the professions holding an advanced degree. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a neurology resident and chief of house staff at the [redacted][3] In [redacted] 2017, he accepted "a graduate educational appointment" as an accredited fellow of vascular neurology in the Department of Neurology at the [redacted]

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that his work as a neurologist is aimed at providing patients with the best possible care and advancing the field through his research. He further states that he seeks to train "other care providers . . . through numerous educational activities." With respect to his clinical research, the Petitioner contends that he will study the "impact of ischemic conditioning on patients with acute ischemic stroke receiving mechanical thrombectomy." He also explains that he will investigate the "sensitivity and specificity of the CT-perfusion scan in predicting ischemic

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[3] The initial filing included a letter from the director of [redacted] neurology residency program stating that the Petitioner was employed as a "Neurology Resident in our [redacted] from [redacted] 2016 and I anticipate him successfully completing the program on [redacted] 2017."

penumbra" and perform another study "comparing the functional outcome of patients receiving mechanical thrombectomy during work hours to those receiving it after hours." Lastly, he asserts that he plans to improve treatment for patients in rural areas through utilization of telemedicine to provide expert stroke consultation.

The record includes the Petitioner's "Graduate Medical and Dental Education Contract" for his vascular neurology fellowship from 2017 until 2018. In addition, he submits a letter from the director of the Program offering him an fellowship position "starting 2018, following your completion of your vascular neurology fellowship here at the ."[4] The Petitioner also provides documentation of his ongoing involvement with to develop a prehospital stroke navigation software that connects ambulances with a dedicated stroke center. Furthermore, he offers various articles that highlight the importance of research advancements in neurology, stroke treatment methods, and stroke telemedicine. We find that the Petitioner's proposed work as a neurology researcher, physician, telemedicine product developer, and health care educator has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. His evidence includes letters of support from colleagues discussing the potential benefits of his research in the neurology field and healthcare industry. For instance, director of the at the asserts that the Petitioner's "planned research will improve the clinical care patients nationwide receive." In addition, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications, as the results are disseminated to others in the field through medical journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed research and telestroke product development, we find that the record supports the Director's determination that he meets the first prong of the *Dhanasar* framework.[5]

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. The Petitioner submitted documentation of his published articles, conference presentations, professional memberships, academic credentials, peer review for journals, staff evaluations, and internal

[4] We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether he satisfies the *Dhanasar* framework, he need not have a job offer from a specific employer as he is applying for a waiver of the job offer requirement.

[5] With respect to the Petitioner's proposed care and treatment of patients and educational duties, while these endeavors have substantial merit, the record does not establish that his clinical and instructional work would impact the neurology field and healthcare industry more broadly, as opposed to being limited to the patients he serves and his medical trainees. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner's clinical work as a neurologist and activities as a medical instructor do not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

awards.[6] He also offered reference letters discussing his medical training, clinical work, and research projects.[7] On appeal, he provides documentation showing his involvement with telestroke product and a proposal for its implementation in North Carolina.

The Petitioner maintains that his clinical experience and success in treating stroke patients, role as chief of house staff instructing other residents, and selection for the fellowship at the render him well positioned to advance his endeavor.[8] Because the Petitioner's proposed clinical and instructional duties do not meet the first prong of the *Dhanasar* framework, our analysis under this prong will focus on whether he is well positioned to advance his proposed research and telestroke product development.

With respect to his neurology research, the Petitioner asserts that he has been active in "publishing medical research in leading medical journals and textbooks." In letters supporting the petition, several medical professors discussed the Petitioner's research aimed at improving the care and treatment of patients suffering from neurological diseases. For example, associate professor of neurology at states that the Petitioner's "work on the new definition of the stroke was selected for publication by the prestigious but does not explain the significance of those findings.[9] In addition, Chief of General Neurology Services at the indicates that this article "demonstrates that stenting showed no improvement in cognitive impairment over aggressive medical management." While contends that the Petitioner's "original research has produced new and important findings that are continuously having positive global implications throughout the field," he does not offer any specific examples of such implications.

professor of neurology at mentions the Petitioner's study of the impact of the new definition of stroke on the trial. indicates that the Petitioner's "results imply an even higher benefit from medical therapy over stenting and a higher risk of symptomatic cerebral infarction in both groups than originally described in

Regarding the Petitioner's study entitled associate professor at the

[6] The Faculty Excellence awards were presented by "students of the College of Medicine" to honor exceptional resident faculty "with a Teacher of the Month nomination."

[7] We discuss only a sampling of these letters, but have reviewed and considered each one.

[8] The letter from the director of the Program states that this "fellowship involves a pre-requisite year to learn basic catheter skills, neuroimaging, and other important "clinical aspects of cerebrovascular disease. The second year is a formal 12 month experience in NeuroEndovascular techniques . . . ." Selection for a clinical training program to learn basic skills relating to the treatment of cerebrovascular disease is not necessarily an indicator that the Petitioner is well positioned to advance his proposed endeavor.

[9] This article is entitled

states that the Petitioner also notes the Petitioner observed that patients experienced "the greatest decline during the postprandial period and that this decline indicates an accelerated clearance of resulting from meal-induced oxidative stress." He concludes that "[t]his is a significant finding as this is the first study to demonstrate elevated levels among patients with intracranial atherosclerosis." While the aforementioned references note the importance of the Petitioner's research projects, they do not offer specific examples of how the Petitioner's findings have generated positive interest among relevant parties, have been implemented as part of stroke treatment programs, or otherwise reflect a record of success in his area of research.

With regard to the Petitioner's telestroke product development work for he offers a letter from and the company's co-founders, stating that he co-invented a novel healthcare technology product with them which "operates to connect ambulances with a dedicated stroke center" and that their company owns the patent for this device.[10] His appellate submission also includes an amended operating agreement for identifying the Petitioner as a member, information about the company's prehospital stroke navigation software, and a "to develop video telestroke capabilities" in some of its ambulances. Although EMS has developed an implementation plan for telestroke product, the record does not adequately document that the product stands to be utilized beyond this single locality.

The record demonstrates that the Petitioner has conducted, published[11], and presented research during his medical career and been involved with the development of telestroke product. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner has not shown that his research has been frequently cited[12] by independent neurologists or otherwise served as an impetus for progress in the field, that it has affected clinical

[10] The record does not include a copy of this patent to support their assertion that the Petitioner was one of the inventors.

[11] On appeal, the Petitioner provides his online profile from reflecting 2,687 publication reads of his body of work and a congratulatory message indicating that his article entitled "Rationale for ischemic conditioning to prevent stroke in patients with intracranial arterial stenosis" "reached 200 reads." While this information indicates that others have read his articles, it does not show the impact of his work or demonstrate that the interest in his work rises to a level of rendering him well positioned to advanced his proposed research.

[12] The Petitioner's response to the Director's request for evidence (RFE) included an article entitled "Citation analysis may severely underestimate the impact of clinical research as compared to basic research." Although this article discusses the limitations of popular bibliometric indicators, such as the h-index and the impact factor, and concludes that those indicators are not reliable in making "accurate between-field comparisons," it does not undermine the value of citations as one of the tools for assessing clinical research performance. For example, the article states that "[c]itation analysis is widely used in the assessment of research performance in the medical sciences."

practice, or that it has generated substantial positive discourse in the broader medical community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in his area of research.

In the appeal brief, the Petitioner refers to an AAO non-precedent decision concerning a metallurgical engineer whose proposed endeavor involved performing services for her company's production and manufacturing projects. *See Matter of L-R-R-*, ID# 448049 (AAO Aug. 21, 2017). He contends we determined that a letter from this engineer's employer was sufficient to meet the second prong of the *Dhanasar* framework. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Here, the Petitioner has not shown that the evidence and issues in *Matter of L-R-R-* are substantially similar to the present case. Furthermore, while we found in *Matter of L-R-R-* that the engineer was well positioned to support her particular company's production and manufacturing operations, we specifically noted that her evidence was insufficient to show her metallurgy research constituted a record of success or progress in her field, or had garnered degree of interest in her work from relevant parties, that would rise to the level of rendering her well positioned to advance any type of research endeavor. *Id.* at 6, n.8.

Regarding the Petitioner's peer review activities, he provided documentation indicating that he had completed one review each for and at the time of filing. He also offered several invitations that he received to review papers for journal publication. The Petitioner has not documented the reputation of the aforementioned journals or offered other evidence demonstrating that his peer review experience rises to the level of rendering him well positioned to advance his proposed research endeavor. The record does not show that the Petitioner's occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance neurology research.

In response to the Director's RFE, the Petitioner provided an email and a letter of support from Deputy Editor-in-Chief of indicating that he reviewed a manuscript for this journal in April 2017. He also submitted a June 2017 email from inviting him "to serve as a Member of the beginning July 1, 2017 and ending June 30, 2019." On appeal, the Petitioner contends that his service as a reviewer for the aforementioned journal and membership in the demonstrate that he is well positioned to advance his proposed endeavor. The Petitioner's manuscript review for membership, however, post-date the filing of the petition. *See* 8 C.F.R. § 103.2(b)(1), (12). Regardless, without further information and documentation regarding the significance of this evidence, we do not find it sufficient to demonstrate that the Petitioner is well positioned to advance his proposed research or product development.

In sum, the Petitioner has not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, that rise to the level of rendering him well positioned to advance his proposed endeavor of conducting clinical research and product development aimed at improving patient care in the neurology field. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his research and clinical skills and accomplishments, and based on the impracticality of labor certification and a "national shortage of neurologists on a nationwide level."[13] However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of S-A-K-*, ID# 1264560 (AAO June 5, 2018)

[13] We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.